

EXHIBIT H

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHERVON (HK) LIMITED,)
et al.,)
Plaintiffs,) C.A. No. 19-1293 LPS
v.)
ONE WORLD TECHNOLOGIES,)
INC., et al.,)
Defendants.)

Thursday, May 27, 2021
2:00 p.m.

844 King Street
Wilmington, Delaware

BEFORE: THE HONORABLE SHERRY R. FALLON
United States District Court Judge

APPEARANCES:

GREENBERG TRAURIG
BY: BENJAMIN J. SCHLADWEILER, ESQ.
BY: MATTHEW S. LEVINSTEIN, ESQ.
BY: JAMES J. LUKAS, ESQ.

Counsel for the Plaintiff

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1 THE COURT: Good afternoon. This
2 is Magistrate Judge Sherry Fallon joining the
3 discovery dispute teleconference this afternoon
4 in Chervon, Ltd., et al., versus One World
5 Technologies, et al. Let me first make a record
6 who is appearing on the call. I believe we have
7 Ms. Stacy Ingram, our court stenographer, is
8 that correct.

9 COURT REPORTER: Yes, Your Honor.
10 I'm here.

11 THE COURT: All right. Very good.
12 And also my law clerk Ms. Polito has joined.
13 Let's start with appearances of counsel now,
14 starting with counsel for the plaintiffs,
15 Delaware counsel.

16 MR. SCHLADWEILER: Good afternoon,
17 Your Honor. This is Ben Schladweiler from
18 Greenberg Traurig on behalf of plaintiff
19 Chervon. I'm joined with today by James Lukas
20 and Matthew Levinstein, both from our Chicago
21 office.

22 THE COURT: All right. Thank you,
23 everyone. And the same on the defense side.

24 MR. BIGGS: Good afternoon, Your
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1 APPEARANCES CONTINUED:

2 DLA PIPER LLP
3 BY: BRIAN A. BIGGS, ESQ.
4 BY: DAMON M. LEWIS, ESQ.
5 BY: SEAN C. CUNNINGHAM, ESQ.

6 Counsel for the Defendant

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1 Honor. This is Brian Biggs from DLA Piper on
2 behalf of defendants. With me on the line are
3 my colleagues, Sean Cunningham and Damon Lewis,
4 also of DLA Piper.

5 THE COURT: Good afternoon. All
6 right. There's a number of issues that we need
7 to address this afternoon. Hopefully the
8 parties will let me know if any have since been
9 resolved, and if not, we'll address them all.

10 I'd like to begin with document
11 item number 207, which is the moving submission
12 from Chervon relating to the alleged discovery
13 misconduct arising from the e-mail production
14 made by defendants One World.

15 MR. LEVINSTEIN: Yes, Your Honor.
16 This is Matthew Levinstein for Chervon. I'll be
17 presenting argument on this. May I begin?

18 THE COURT: Please begin.

19 MR. LEVINSTEIN: Thank you, Your
20 Honor. So the relief that Chervon is requesting
21 here is pretty simple and straightforward. And
22 I know Your Honor is familiar with the briefs,
23 so I will do my best to get through this quickly
24 because I know we have a lot of issues to get

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1 rectified by using, in conjunction with outside
2 counsel, an e-discovery specialist, a more
3 robust search tool. One World also represents
4 that it modified the search terms to provide,
5 quote unquote, meaningful hits.

6 Chervon's motion to compel seeks
7 an explanation from One World accounting for the
8 vast discrepancy in the e-mail production and
9 leave to move for sanctions for the alleged lack
10 of compliance with One World's discovery
11 obligations under rule 37. The discovery rules
12 and the case authorities interpreting them leave
13 no dispute that a party has a duty to fully
14 cooperate with its discovery obligations for
15 purposes of rule 37A(4), an evasive or
16 incomplete disclosure, answer or response must
17 be treated as a failure to disclose, answer or
18 respond. And I'll refer also to a case
19 citation, Eon Corp, IP Holdings versus Flow TV
20 and Tulip Computers International versus Dell.

21 The Court does not subscribe to
22 the view that as long as the requesting party
23 eventually gets the discovery requested, the
24 conduct of the producing party which precedes it

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1 is irrelevant. Here, the Court finds a
2 sufficient gap in the magnitude between the
3 initial and subsequent production of e-mails to
4 reasonably call into question whether One World
5 is in compliance with its obligation under rule
6 37. The Court requires an explanation of this
7 disparity to determine whether it is the result
8 of harmless inadvertence or lack of a good faith
9 search.

10 Therefore, the Court grants in
11 part Chervon's motion to compel as follows. On
12 or before June 4, One World shall provide to
13 Chervon hit counts on Chervon's original e-mail
14 search strings as listed in its form of proposed
15 order at DI 207-2 at paragraph 2. That's the
16 order attached to Chervon's moving submission.
17 On or before June 4, One World shall provide to
18 Chervon a declaration addressing the factually
19 detailed basis for the large disparity between
20 the e-mail production, the explanation for the
21 delay in recognizing a deficiency in the first
22 e-mail production, a factually detailed
23 description of the, quote, technical limitation
24 in its prior search, which it rectified by using

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1 a more robust search tool, end quote, and the
2 detailed facts underlying the process it
3 implemented to modify the terms to provide
4 meaningful hits.

5 While this order does not compel
6 disclosure of privileged information, the Court
7 expects that One World will not unreasonably
8 assert claims of privilege to frustrate or
9 obstruct the purpose of the declaration.

10 Then on or before June 11, should
11 a reasonable basis exist, Chervon has leave to
12 move for sanctions under rule 37 in accordance
13 with the Court's discovery dispute procedures
14 for requesting a hearing date via a joint motion
15 and subject to the page limitations for letter
16 briefing which govern discovery disputes. And I
17 fully expect that prior to doing that and moving
18 ahead with a sanctions motion, that that would
19 be carefully reviewed by Chervon, that there
20 would be a meet and confer between the parties
21 if the declaration I've ordered to be supplied
22 leaves any question about whether this is, as I
23 said, harmless inadvertence or lack of a good
24 faith search. And then if Chervon believes

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1 reasonably that there's a basis for moving
2 ahead, it has leave to file a rule 37 motion,
3 but I prefer it to be briefed in accordance with
4 my standard discovery dispute procedures. I'm
5 not going to authorize at this time, you know,
6 the 20 page, 20 page, 10 page or whatever
7 briefing under the local rules. So that is my
8 order with respect to this issue.

9 At this time I would like to stay
10 with the issues raised by the plaintiffs and
11 move on next to the motion to compel complete
12 sales, finance, marketing and advertising
13 related production from One World. First, let
14 me ask, who will be addressing that on behalf of
15 Chervon, because we've already spent quite a bit
16 of time on this call with respect to the e-mail
17 issue and I think I can move this issue along a
18 bit more quickly if I find out who is addressing
19 it and ask my questions at the outset.

20 MR. LEVINSTEIN: Thank you, Your
21 Honor, this is Matthew Levinstein for Chervon.
22 I will be addressing these issues.

23 THE COURT: All right. So Mr.
24 Levinstein, you've obviously read Chervon's --

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